

1 TONY: Oh, cause she said, "You just have
2 to get it from the factory a warehouse."

3 FEMALE SPEAKER: Yeah, I know, but she
4 has to bring it to me. I don't have time it's
5 Mother's Day. I don't have the time. I can't go.
6 You know.

7 TONY: Do you want me to call her right
8 back or?

9 FEMALE SPEAKER: Yeah, call her and ask
10 her if she is going to bring it here.

11 TONY: Okay. So I'll call her right now.
12 Because I don't until next week. Next Saturday.
13 Okay, right, thank you so much. Goodbye.

14 FEMALE SPEAKER: Right, okay. Goodbye.

15 (Conversation ends. Start of new conversation
16 and speaker.)

17 (Different speaker.)

18 GENE: Hello, Gene, speaking.

19 AUDREY STORCH: Hi, Gene it's Audrey.

20 GENE: Hi.

21 AUDREY STORCH: Okay. I was going to
22 call you in a few minutes. Let me give you his
23 number. It's 201-807-9898, and it is Jeff Golden.
24 G-O-L-D-E-N.

25 GENE: And who is he?

1 AUDREY STORCH: He's the owner of
2 Bearhands, B-E-A-R-H-A-N-D-S.

3 GENE: Is it Goldman or, I'm sorry.

4 AUDREY STORCH: Bear, B-E-A-R hands, H-A-
5 N-D-S.

6 GENE: Oh, Bearhands, sorry, okay

7 AUDREY STORCH: Right he is a Wholesale
8 Manufacture like I am, he makes children's
9 products.

10 GENE: Oh, okay, great.

11 AUDREY STORCH: He's a really great guy.
12 If you want you could call him or he's going to
13 call you within the next five minutes.

14 GENE: He could call me, that would be
15 okay. It doesn't matter, he could call me.

16 AUDREY STORCH: But by Wednesday
17 afternoon he will know exactly his inventory. But
18 the worst case scenario he will be able to get you
19 at least half of it. But he should be able to get
20 you all of it.

21 GENE: Okay.

22 AUDREY STORCH: All right.

23 GENE: All right, so, um, I guess I will
24 work through him, and I will submit the order
25 through him.

1 AUDREY STORCH: Yep, and then just --
2 anything else just call me, and I'll -- I'm kind
3 of working freelancing for him, and other people
4 right now. Until my new company is up and running
5 again.

6 So but for the books you buy from Bearhands.

7 GENE: Okay.

8 AUDREY STORCH: Okay. (Inaudible) but
9 any orders whatever, just call me and I will
10 process everything, don't worry about it.

11 GENE: Would you prefer to wait until the
12 order goes through you?

13 AUDREY STORCH: No, no, no, to order the
14 books just go through Bearhands.

15 GENE: Okay.

16 AUDREY STORCH: Yeah, I'm not doing the
17 books anymore for now.

18 GENE: Okay. Don't make it go through
19 Audrey for (inaudible) Books to Go (phonetic), or
20 whatever?

21 AUDREY STORCH: Nope, nope. The books,
22 I'm not selling them. Bearhands is.

23 GENE: Okay, Bearhands is.

24 AUDREY STORCH: Yep. I'm not selling
25 them anymore, the books. They're my invention,

1 but it's a long story, which I will explain to you
2 one day. But it's a long a story.

3 GENE: Okay. Well, I'm sorry, you're
4 running through complications with this.

5 AUDREY STORCH: Yeah, someone stole one
6 of my patents, and even though wasn't done
7 accurately, uh, litigation fees are three hundred
8 thousand dollars, and even though you win, the
9 judgement and litigation fees, but to stop
10 litigation you can't sell the product even though
11 it's yours. It's a whole complicated thing.

12 GENE: So you lost all these products.

13 AUDREY STORCH: Huggin' Issue (phonetic)
14 I legally did in my name, and I own, and they
15 couldn't steal any patent from that, the factory,
16 because I owned all the rights before I met the
17 factory in China.

18 The books she was manufacturing them for me
19 and she was a thief. Found out later and I fired
20 her. Um, and then she pulled this on me, yeah.

21 GENE: You should take her to court then.

22 AUDREY STORCH: It's (inaudible) that's
23 why I have to go down (inaudible) three hundred
24 thousand in legal bills for a company. I don't
25 220 for my products. That put me down.

1 GENE: Oh.

2 AUDREY STORCH: Yeah, so going forward
3 the books I can't sell right now, but the dolls I
4 can.

5 GENE: Okay.

6 AUDREY STORCH: The inventory that's left
7 that's why you have to wait until Wednesday,
8 because Jeff is going to inquire the inventory
9 hopefully by Wednesday.

10 GENE: Oh, okay. So the books, -- I had
11 gotten some books from you through Hallmark.

12 AUDREY STORCH: Right. Because they sell
13 them too. You can buy them at stores or wherever.

14 GENE: Oh, okay.

15 AUDREY STORCH: So Hallmark won't have
16 that volume left in stock. You will have to get
17 it from Jeff.

18 GENE: Right.

19 AUDREY STORCH: When checks the inventory
20 on Wednesday.

21 GENE: Right. So I mean, let's say if
22 they order it, say hypothetically. Like 200 or
23 something like this, do they have that kind of an
24 order?

25 AUDREY STORCH: Yeah, yeah.

1 GENE: So it is available?

2 AUDREY STORCH: Yep, they'll have it, no
3 problem.

4 GENE: Okay. So I guess you'll set it up
5 or I can just you know.

6 AUDREY STORCH: Yep, you just call him,
7 and then see whatever it's okay.

8 GENE: Okay, and he will call me back?

9 AUDREY STORCH: Yep, he's going to call
10 you -- or -- he's going to call you in five
11 minutes.

12 GENE: Okay, great.

13 AUDREY STORCH: Okay. If you have any
14 problems or issue, always feel free to call me.

15 And then eventually when we're ready I would
16 love to meet with you and talk with you about
17 Huggie Issues (phonetic) and how it is working in
18 the schools system.

19 GENE: Sure. And what's your number
20 again? Just so that I make sure that I have it.
21 What's your number again, 973-650?

22 AUDREY STORCH: Five seven, nine three.
23 It's my cell. Because we will be coming out with
24 the Huggie Issue with a recording chip in it.
25 So the sounds and, all that (inaudible) is a

1 lot of fun to with a hug with the doll.

2 GENE: Well, good luck, you know, with
3 your case. Sorry, things had to happen that way.

4 AUDREY STORCH: Well, you know what, bad
5 things happen to good people, but you have to move
6 forward anyway.

7 GENE: Uh, hum. Well, I hope your new
8 company, you know, hopes to go or stuff that I'm
9 sure will bounce back.

10 AUDREY STORCH: I hope so. From your
11 mouth to God's ear, right.

12 GENE: Yeah, right.

13 AUDREY STORCH: If not I will help you
14 guys and my regulars.

15 GENE: Well, it's too bad, because I
16 think because of this litigation thing that that's
17 why they, cancelled the order. I think they
18 looked on the site and saw that it was closing or
19 something.

20 AUDREY STORCH: Yeah. Had to do that,
21 um, (inaudible) will be up and running, yes. But
22 the books will be with Jeff for now. So don't
23 worry about it. Okay?

24 GENE: Wonderful. Okay.

25 AUDREY STORCH: All right, Gene thank you

1 so much. I will talk to you when I get back or,
2 you know, call me if you have any issues.

3 GENE: Okay, thank you.

4 AUDREY STORCH: Thanks.

5 GENE: Okay, bye, Audrey.

6 (Start of new conversation)

7 FEMALE SPEAKER: Good Afternoon,
8 Bearhands.

9 GENE: Yes, hello.

10 FEMALE SPEAKER: Hello?

11 GENE: Yes, hello.

12 FEMALE SPEAKER: Hello, Bearhands.

13 GENE: Is Jeff Golden available?

14 FEMALE SPEAKER: May I ask who's calling?

15 GENE: This is Gene.

16 FEMALE SPEAKER: From?

17 GENE: Audrey Storch.

18 FEMALE SPEAKER: Hold on, please.

19 Gene, just hold on a second.

20 GENE: Sure.

21 JEFF GOLDEN: Hello.

22 GENE: Yes, hello, Hi. Audrey Storch had
23 asked me to give you a call.

24 JEFF GOLDEN: Sure who is this, Gene?

25 GENE: Yes.

1 JEFF GOLDEN: Gene, could you just hold
2 on one second?

3 GENE: Sure.

4 JEFF GOLDEN: Thanks. Yeah, Hi, how are
5 you?

6 GENE: I'm good. How are you?

7 JEFF GOLDEN: Good, thanks.

8 GENE: Audrey Storch explained, I guess
9 she was selling you all her shipment of things.
10 And that from now on anything would have to be
11 purchased through you.

12 JEFF GOLDEN: Correct, correct, correct.
13 I don't know if she's selling it to me, but I'm --
14 in a roundabout way I should have those, I should
15 have all the books in my possession, um, after
16 Wednesday.

17 GENE: After Wednesday.

18 JEFF GOLDEN: Yes.

19 GENE: Oh, so they are not in your
20 possession now?

21 JEFF GOLDEN: No, no, no, but I'm going
22 through the motions of obtaining them. And, ah, so
23 I will know definitively on Wednesday whether
24 indeed I have them. But, I mean, for all intents
25 and purposes I should. But, you know, it's a

1 whole procedure, so before we can cross all our
2 T's and dot all our I's we just have to, ah, wait
3 until Wednesday.

4 GENE: Okay. So if I were to submit an
5 order would it be to Audrey Storch and then to
6 you?

7 JEFF GOLDEN: I think the best way to do
8 it would be to do it directly to us. Which is
9 Bearhands is the name of my company. If you want,
10 Gene I can send you an e-mail would that be good
11 with all the information or fax you something?

12 What would be the best way for you to go about
13 it?

14 GENE: Um, I guess you can fax me
15 something.

16 JEFF GOLDEN: Sure. Okay, um, now what
17 is your school?

18 GENE: Oh, we're Special Child in
19 Paterson.

20 JEFF GOLDEN: Oh, okay, it's in Paterson.

21 GENE: Yeah.

22 JEFF GOLDEN: She said Passaic. You're
23 in Paterson. And the name of the school is
24 Special Child?

25 GENE: Yeah.

1 JEFF GOLDEN: (Inaudible) and your phone
2 number is 973-523-6778?

3 GENE: Yes.

4 JEFF GOLDEN: Extension 12.

5 GENE: That's correct.

6 JEFF GOLDEN: And how do you spell your
7 first name, G-E-N-E?

8 GENE: That's correct.

9 JEFF GOLDEN: Okay.

10 GENE: And the fax number here is 973-
11 523-7715.

12 JEFF GOLDEN: Uh, hum. Okay.

13 GENE: And put attention Gene.

14 JEFF GOLDEN: Okay.

15 GENE: And we're looking to order to get
16 the ABC book.

17 JEFF GOLDEN: And the Old McDonald had a
18 farm book?

19
20 GENE: That's correct.

21 JEFF GOLDEN: And the Happy Birthday
22 Book?

23 GENE: That's correct.

24 JEFF GOLDEN: Was that a 100 of each book
25 is that what Audrey had mentioned I believe?

1 GENE: Yeah, I'm going to take a look at
2 it I'm going to submit it and see what they say,
3 and get a price on that and a description list.

4 JEFF GOLDEN: Sure.

5 GENE: And this way I will submit it, --
6 I submitted through her last time cause the
7 company I guess she was having some kind of
8 problem or something. They saw she was folding or
9 something.

10 JEFF GOLDEN: Yeah, right. Well, she had
11 a whole run in with -- it's a whole long story.

12 The good thing is we should have the books,
13 and, you know, it's the, you know, the books she
14 had manufactured.

15 GENE: Okay. So.

16 JEFF GOLDEN: I believe the prices would
17 be the same 19.95 for the ABC and the farm book,
18 and \$12 for the Happy Birthday Book.

19 GENE: Okay. So, um, this will be
20 submitted through your company Bearhands.

21 JEFF GOLDEN: Sure. Right.

22 GENE: And the ABC Books and the Old
23 McDonald had a Farm books, and the Happy Birthday
24 books.

25 JEFF GOLDEN: Right.

1 GENE: Okay. Then I guess I will wait
2 for that fax and when I get it I will submit it.

3 JEFF GOLDEN: Sure. You know, what if
4 you don't mind, I can send you the info now, but I
5 would prefer to wait to know that I had it so we
6 just don't, you know, go through the motions with
7 this. Can you wait for Wednesday for this? Or
8 would you rather have it in hand just to have it
9 in front of you. Then I could just let you know
10 100 percent on Wednesday?

11 GENE: Ah, I would just rather have it in
12 hand right in front of me so I can just submit it
13 right away.

14 JEFF GOLDEN: Sure.

15 GENE: Because that may take awhile and
16 that may save a couple of days.

17 JEFF GOLDEN: Sure, no problem. Okay, so
18 it's for the Special Child's School of Paterson,
19 New Jersey.

20 GENE: Yes.

21 JEFF GOLDEN: And what is your address?

22 GENE: Um, let's see I don't have a card
23 off hand.

24 JEFF GOLDEN: That's okay, you know what,
25 I'll just put it to your attention 973-523-7715.

1 What is your last name?

2 GENE: Baillargeon (phonetic)

3 JEFF GOLDEN: How do you spell that?

4 GENE: B-A-I-L-L-A-R-G-E-O-N.

5 JEFF GOLDEN: Uh, hum. G-E-O-N?

6 GENE: Correct.

7 JEFF GOLDEN: Baillargeon. Okay. Great.

8 GENE: And I am speaking with -- is it

9 Jeff?

10 JEFF GOLDEN: I am Jeff.

11 GENE: Ah, Mr. Golden?

12 JEFF GOLDEN: That's me.

13 GENE: And you're at 201-807-9898?

14 JEFF GOLDEN: That's correct.

15 GENE: And that's at Bearhands Company?

16 JEFF GOLDEN: Yeah, Bearhands Limited.

17 If you want you can, ah, go on the web,
18 Bearhands.net, and you can see all our other
19 products.

20 GENE: Okay. Will this product be up on
21 there or?

22 JEFF GOLDEN: Not yet because we don't
23 have it, but as soon as we do we are going to put
24 it up.

25 GENE: Okay, great, so you will fax this

1 over?

40

2 JEFF GOLDEN: Yep, I will do that today
3 if I can.

4 GENE: Okay, thanks very much.

5 JEFF GOLDEN: Okay, thank you.

6 GENE: Okay, bye-bye.

7 (End of above conversation)

8 (Start of new conversation)

9 ANSWERING MACHINE: That you received for
10 23 p.m. Thursday, May 22. To listen to the
11 message press zero.

12 "Hi, Gene. It's Jeff from Bearhands. I just
13 wanted you to know that I also have the Happy
14 Birthday Book as well, so I wanted you to be aware
15 of that. So, um, just send me an appeal
16 (phonetic) and we'll take care of it.

17 Thanks, so much, man, bye-bye."

18 (End of tape.)
19
20
21
22
23
24
25

C E R T I F I C A T E

I, Mary T. Rigolosi, the assigned transcriber, do hereby certify that the foregoing transcript of a phone conversation of Audrey Storch, Gene Baillargeon, and Jeff Golden, and Tony Fatonovich, is a true and accurate non-compressed transcript of the proceedings to the best of my knowledge and ability.


Mary T. Rigolosi

6/17/08

AudioEdge Transcription, LLC.

Exhibit 5

Expert Report

UNITED STATES DISTRICT COURT
DISTRICT COURT OF NEW JERSEY

EXPERT REPORT

BY

RICHARD A. JOEL, ESQ.

November 9, 2007

INTRODUCTION

I am an attorney at law in New Jersey and a partner in the law firm of Joel & Joel, LLP. I specialize in Intellectual Property Law and I am a registered patent attorney (Reg. No. 22,212).

I have a Mechanical Engineering Degree from Stevens Institute of Technology. I also have a Masters in Business Administration Degree, a Juris Doctor Degree and a Masters in Law Degree from New York University. I have been patent counsel for Timex and General Time and I have also worked as a patent attorney for Western Electric and AMF. I have been in private practice for approximately thirty (30) years, handling all phases of patent prosecution, litigation and licensing. I have served as an expert witness in the past.

I prosecuted U.S. Patent 6,641,170 for the inventor Winnie Yip of Saddle River, New Jersey. The patent was allowed on November 4, 2003 with two (2) claims. I also filed two (2) copyrights U.S. Copyright No. TXu-1-059-189 for Old McDonald's Farm and U.S. Copyright No. TXu-1-123-585 for ABC. The copyrights were registered on August 24, 2001 and May 17, 2002, respectively.

My Curriculum Vitae is annexed hereto as Exhibit 1. My hourly billing rate for my work in this matter including depositions and testimony is \$350.00 per hour. I have been retained by counsel for plaintiff to analyze infringement issues in the matter of Wai Yip International Corp. v. JAAM, LLC and Audrey Storch. This case involves issues of both patent and copyright infringement by defendants. I understand that I may be asked to address additional issues raised by defendant's expert witnesses or other issues as directed by counsel for plaintiff.

I make this report based at least in part upon my own knowledge and experience I have considerable experience in the patent and copyright field and I have prosecuted the intellectual property patent and copyright noted herein. My understanding is that the invention of a

children's sound book in U.S. Patent 6,641,170 is patentable over the cited references and is presumed valid. I consider that I am able to provide an expert opinion on the possibility of infringement of both the copyrights and utility patent.

INFRINGEMENT

I received copies of both the defendant's product and the product covered by plaintiff's patent and copyrights. I have reviewed both the singing ABC book and Old McDonald's Farm book sold by JAAM, LLC and it is my opinion that the two products infringe the claims of patent 6,641,170. An outline of the claimed terms is annexed hereto as Exhibit 2.

The defendant's products are obvious knock-offs of plaintiff's product including as I understand it the voice of plaintiff's son on the ABC book. The Old McDonald's Farm book is a total knock-off of the plaintiff's product with exactly the same images and sounds. A patent is presumed valid and the defendant has made no meaningful attack on the validity thereof which need to be addressed.

The plaintiff's ABC book is copyrighted and the defendant's ABC book an obvious copy of the plaintiff's book with the same animals, but slightly different representations, the same door in a tree, a blonde hair girl with a net, etc. It is particularly striking that the same animals and articles are used for the particular letters in the alphabet even though the representations have been changed somewhat. The owl is in a tree and the eggs in a straw basket in the tree, a squirrel is sitting with an acorn on a stump of the tree, etc. A transparent effort was made to avoid plaintiff's copyright while copying the expressions contained therein.

The most striking example of copyright infringement is the Old McDonald's Farm book where the defendants' representation is an identical copy of plaintiff's book. There is absolutely no difference in the representations of the JAAM product and plaintiff's product.

In order to establish infringement, a plaintiff must establish (1) ownership of a valid copyright and (2) copying of constituent elements of the work that are original. The second requirement falls into two separate steps wherein the plaintiff must prove actual copying, usually by showing that the defendant has access to the allegedly infringed work and that there is a probative similarity between the infringed and infringing work. Secondly, actionable copying showing that the infringing work is substantially similar to protected the expression in the infringing work.

The plaintiff does have actual copyright certificates (TXu-1-059-189 Old McDonald's Farm; and, TXu-1-123-585 ABC). Defendant had access to the subject matter of the aforementioned copyrights. Defendants had a business relationship with plaintiff wherein defendants ordered books from plaintiff for the purpose of selling the books. Plaintiff was at all relevant times involved in this action. The defendant had an adequate opportunity to copy the work. As noted previously, there is a striking similarity between the plaintiff's books and the defendant's books and in the case of the Old McDonald's Farm book, the products are absolutely identical. With regard to the ABC books, the books have substantial similarities but there are other items such as the fact the voice of plaintiff's son is used in the defendant's book.

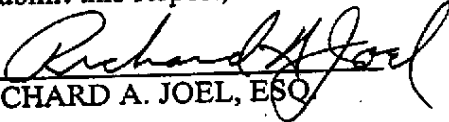
It is also noted that defendant attempted to copyright their version of plaintiff's copyrighted material, but the dates are subsequent to the plaintiff's dates. In my opinion, this is a flagrant case of copyright infringement.

Plaintiff's softbook has the copyright notice prominently displayed on the rear of the book as well as a patent notice, "*U.S. Pat. Pending.*" In my opinion, the Old McDonald's Farm book with the same sounds and the same representations is a direct infringement of plaintiff's patent and copyright. The ABC book is also an infringement.

OPINION

Based upon the foregoing, it is my opinion that the defendant's ABC and Old McDonald's Farm books infringe the claims of plaintiff's patent 6,641,170 and also infringe plaintiff's copyrights on the respective books.

I submit this Report, dated November 9, 2007


RICHARD A. JOEL, ESQ.